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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,987	06/12/2003	John I. Shipp	115.0004-03000	8851
7590	03/09/2009		EXAMINER	
Martin & Ferraro, LLP 1557 Lake O'Pines Street, NE Hartville, OH 44632			NGUYEN, TUAN VAN	
ART UNIT	PAPER NUMBER			
	3731			
MAIL DATE	DELIVERY MODE			
03/09/2009	PAPER			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief		Application No. 10/619,987	Applicant(s) SHIPP ET AL.
		Examiner TUAN V. NGUYEN	Art Unit 3731
<p>– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –</p> <p>THE REPLY FILED 17 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</p> <p>1. <input checked="" type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input checked="" type="checkbox"/> The period for reply expires 3 months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> <p>NOTICE OF APPEAL</p> <p>2. <input type="checkbox"/> The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p> <p>AMENDMENTS</p> <p>3. <input type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because</p> <p>(a) <input type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).</p> <p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p> <p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____. </p> <p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>7. <input checked="" type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input type="checkbox"/> will not be entered, or b) <input checked="" type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____</p> <p>Claim(s) objected to: _____</p> <p>Claim(s) rejected: 1-13, 39-43, 45 and 46</p> <p>Claim(s) withdrawn from consideration: _____</p> <p>AFFIDAVIT OR OTHER EVIDENCE</p> <p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p> <p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p> <p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p> <p>REQUEST FOR RECONSIDERATION/OTHER</p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u></p> <p>12. <input type="checkbox"/> Note the attached <i>Information Disclosure Statement(s)</i>. (PTO/SB/08) Paper No(s). _____</p> <p>13. <input type="checkbox"/> Other: _____</p> <p>/Anhuan T. Nguyen/ Supervisory Patent Examiner, Art Unit 3731</p> <p>/T. V. N./ Examiner, Art Unit 3731</p>			

Continuation of 11. does NOT place the application in condition for allowance because: With respect to the argument that the new limitation of "said arm and said member being biased toward one another in an open position" is fully supported in the first full paragraph of page 5 of the March 2008 Amendment has been fully considered but they are not persuasive. Nowhere in the first full paragraph of page 5 of the March 2008 Amendment discloses the aforementioned new limitation. The arm and the member of the clip by itself can not be biased open.

With respect to the argument that the at least Fig. 2J supports the recitation of "the maximum length of said connector approximating the maximum height of said connector" has been fully considered but they are not persuasive. Examiner asserts that the length of the connector (tension coil 234) is substantially equal the circumference of the circle or loop 234 and the height of the connector 234 (tension coil 234) is substantially equal the outer diameter of the circle or loop 234. The circumference of a circle is about 3 times longer than the diameter because the circumference equal to the diameter multiplied with pie, wherein pie having a constant value of 3.14.

With respect to the argument that Figure 2J supports the recitation of new limitation "the maximum length of said connector approximating the maximum height of said connector and being less than half of the maximum lengths of one of said support member and said clamping arm" have been fully considered but they are not persuasive. As already established in the second paragraph, the maximum length of the tension coil 234 or connector can not approximating the maximum height of the tension coil 234.

With respect to the arguments that Kees fails to disclose a process for selecting the dimensions of the central spring section (26) and the connecting portions (28) and (30), as such, the dimensions of the central spring section (26) and the connecting portions (28) and (30) of the clip (10) of Kees are not result effective variables have been fully considered but they are not persuasive. Kees discloses the jaws may be shortened to desired length (col. 1, line 38), thus, Kees disclose an effective variable.